

IN THE STATE COURT OF COBB COUNTY  
STATE OF GEORGIA

GREGORY SMITHEY,	)	
	(	
Plaintiff,	)	
	(	CIVIL ACTION FILE NO.
v.	)	23-A-3557
	(	
HARBOR FREIGHT TOOLS USA, INC.,	)	
AND JOHN DOES 1-5	)	
	(	
Defendants.	)	

**DEFENDANT HARBOR FREIGHT TOOLS USA, INC. 'S**  
**NOTICE OF FILING NOTICE OF REMOVAL TO FEDERAL COURT**

NOTICE IS HEREBY GIVEN that Defendant Harbor Freight Tools USA, Inc. has on this date removed the above-captioned action the United States District Court for the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. Attached as Exhibit 1 is a true and correct copy of Defendant's Federal Notice of Removal, with exhibits.

This 14th day of September, 2023.

SWIFT, CURRIE, McGHEE & HIERS, LLP

*/s/ Myrece R. Johnson*

---

C. Bradford Marsh  
Georgia Bar No. 471280  
Myrece R. Johnson  
Georgia Bar No. 940301  
*Attorneys for Defendant Harbor Freight Tools USA, Inc.*

1420 Peachtree St. N.E., Suite 800  
Atlanta, Georgia 30309  
Telephone: (404) 874-8800  
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[brad.marsh@swiftcurrie.com](mailto:brad.marsh@swiftcurrie.com)  
[myrece.johnson@swiftcurrie.com](mailto:myrece.johnson@swiftcurrie.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I caused the attached **DEFENDANT HARBOR FREIGHT TOOLS USA, INC.'S NOTICE OF FILING NOTICE OF REMOVAL TO FEDERAL COURT** to be filed and served on counsel of record as follows:

Frank A. Ilardi  
Ilardi Law, LLC  
1201 Peachtree Street, NE  
Suite 2000  
Atlanta, Georgia 30361  
[frank@ilawgeorgia.com](mailto:frank@ilawgeorgia.com)

This 14th day of September, 2023.

SWIFT, CURRIE, McGHEE & HIERS, LLP

*/s/ Myrece R. Johnson*

---

C. Bradford Marsh  
Georgia Bar No. 471280  
Myrece R. Johnson  
Georgia Bar No. 940301  
*Attorneys for Defendant Harbor Freight Tools USA, Inc.*

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[myrece.johnson@swiftcurrie.com](mailto:myrece.johnson@swiftcurrie.com)

4870-7631-9103, v. 1

## Exhibit C

1. On August 10, 2023, Plaintiff filed a Complaint for Damages in the State Court of Cobb County, State of Georgia, captioned Gregory Smithey v. Harbor Freight Tools USA, Inc. and John Does 1-5, bearing Civil Action File No. 23-A-3557.

2. Plaintiff served Harbor Freight Tools USA, Inc. with the Complaint on August 16, 2023, and this Notice of Removal is timely filed.

3. In accordance with 28 U.S.C. § 1446, true and complete copies all process, pleadings, and orders filed in such action have been attached to this Notice as Exhibit A.

4. Plaintiff's Complaint alleges that on or about August 30, 2021, Plaintiff was an invitee on the premises of a Harbor Freight location in Rincon, Georgia. (Complaint, Ex. A, ¶ 9, 14). Plaintiff's Complaint further alleges that while at the Rincon Harbor Freight location, Plaintiff tripped on an object and fell, hitting his head on the ground. (Complaint, Ex. A, ¶ 10-11). Plaintiff brings a claim of negligence/premises liability against Harbor Freight. (See generally Complaint, Ex. A.)

5. Plaintiff alleges that as a result of the hazard on the premises, he suffered a severe laceration on his head and other injuries. (Complaint, Ex. A, ¶ 12). Plaintiff alleges he has incurred medical expenses and has general damages in

the form of pain and suffering, mental anguish, emotional distress, loss of the capacity for the enjoyment of life and the diminished capacity to labor. (Complaint, Ex. A, ¶ 20-21).

6. This action is a civil action that falls under the Court's original jurisdiction pursuant to United States Code, Title 28, section 1332, and is one that may be removed to this Court by Defendant pursuant to the provisions of Title 28, section 1441(b) because citizenship Plaintiff is diverse from each Defendant and the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

7. For jurisdiction to be proper under 28 U.S.C. § 1332, the amount in controversy must exceed \$75,000.00, exclusive of interests and costs. 28 U.S.C. § 1332(a). "Where the plaintiff has not pled a specific amount of damages, the removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional requirement." Pretka v. Kolter City Plaza II, Inc., 608 F.3d 744, 754 (11th Cir. 2010). "If the jurisdictional amount is not facially apparent from the complaint, the court should look to the notice of removal and may require evidence relevant to the amount in controversy at the time the case was removed." Id. Plaintiff has not alleged in the Complaint a specific amount which he is seeking to recover. Upon information and belief, and based on pre-suit communications, Plaintiff has incurred approximately \$21,000 in

past medical expenses as of November 2022. In pre-suit conversations, Plaintiff alleged he suffered a laceration to his head and numerous issues of memory loss, imbalance and dizziness. Plaintiff made a pre-suit demand of \$250,000 on November 29, 2022. Upon information and belief, Plaintiff has never made a settlement demand of less than \$75,000.

8. Although Defendants deny Plaintiff is entitled to any damages whatsoever, using reasonable deductions and inferences, and in the exercise of common sense, the amount in controversy exceeds \$75,000. See Roe v. Michelin N. Am., Inc., 613 F.3d 1058, 1065 (11th Cir. 2010) (upholding district court's order that the value of the plaintiff's claims, when "analyzed with judicial experience and common sense," likely exceeded \$75,000 threshold in wrongful death case with punitive damages claim); Dixon v. Whatley Oil & Auto Parts Co., 2019 WL 169687, at \*2 (M.D. Ga. 2019) (noting the court may make "'reasonable deductions, reasonable inferences, or other reasonable extrapolations' from the pleadings and other evidence to determine whether the amount in controversy is met"). In this case, Plaintiff alleges he fell, hit his head and suffered a "severe laceration" on his head. (Complaint, Ex. A, ¶ 10). In his pre-suit demand, Plaintiff also asserted he experienced cognitive issues as a result of this accident. (Complaint, Ex. A, ¶ 23, 24). Plaintiff is seeking recovery for medical expenses,

pain and suffering, mental anguish, emotional distress, loss of the capacity for the enjoyment of life and the diminished capacity to labor. (Complaint, Ex. A, ¶ 20-21). Given the nature of the injuries and the scope of damages sought, on experience, information and belief, a preponderance of the evidence shows the jurisdictional minimum amount in controversy as required by 28 U.S.C. § 1332(a) is satisfied. See 28 U.S.C. § 1446(c)(2)(B).

9. There is also complete diversity in this action. Plaintiff is a resident and citizen of Georgia. (Complaint, Ex. A, ¶ 1).

10. Harbor Freight Tools USA, Inc. is a corporation organized and existing under the laws of Delaware, with its principal place of business in California. (See State of Georgia Annual Registration, attached as Exhibit B). Harbor Freight is thus a citizen of California and Delaware for the purposes of jurisdictional analysis, and is diverse from Plaintiff.

11. The citizenship of the fictitious defendants named by Plaintiff, John Does 1-5, must be disregarded for removal purposes. See 28 U.S.C. § 1441(b)(1); Weiland v. Palm Beach Cty. Sheriff's Office, 792 F.3d 1313, 1318 n.4 (11th Cir. 2015).

12. As is shown above, this case is removable pursuant to United States Code, Title 28, section 1441 because the United States District Court has original

jurisdiction under Title 28, section 1332(a), which provides in pertinent part: “The district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between – (1) citizens of different states.”

13. Written notice of this Notice of Removal will be promptly given to all parties in this action. The written notice of filing and a copy of the Notice of Removal is being filed simultaneously with the Clerk of the State Court of Cobb County, State of Georgia, a copy of which has been attached as Exhibit C.

14. Venue is proper in this District Court pursuant to 28 U.S.C. § 1441(a) because the action was originally filed in the State Court of Cobb County, State of Georgia, which lies within the United States District Court for the Northern District of Georgia, Atlanta Division. 28 U.S.C. § 90(a)(2).

WHEREFORE, Harbor Freight Tools USA, Inc. requests this Court assume full jurisdiction over the cause herein as provided by law, and that further proceedings in the State Court of Cobb County, State of Georgia be stayed. Harbor Freight Tools USA, Inc. further demands that the trial of this matter in federal court be heard by a jury.

This 14th day of September, 2023.



SWIFT, CURRIE, McGHEE & HIERS, LLP

*/s/ Myrece R. Johnson*

---

C. Bradford Marsh

Georgia Bar No. 471280

Myrece R. Johnson

Georgia Bar No. 940301

*Attorneys for Defendant Harbor Freight Tools  
USA, Inc.*

1420 Peachtree St. N.E., Suite 800

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[brad.marsh@swiftcurrie.com](mailto:brad.marsh@swiftcurrie.com)

[myrece.johnson@swiftcurrie.com](mailto:myrece.johnson@swiftcurrie.com)

**LOCAL RULE 5.1(C) CERTIFICATION**

By signature below, counsel certifies that the foregoing pleading was prepared in Times New Roman, 14-point font in compliance with Local Rule 5.1(C)

This 14th day of September, 2023.

SWIFT, CURRIE, McGHEE & HIERS, LLP

*/s/ Myrece R. Johnson*

---

C. Bradford Marsh  
Georgia Bar No. 471280  
Myrece R. Johnson  
Georgia Bar No. 940301  
*Attorneys for Defendant Harbor Freight Tools  
USA, Inc.*

1420 Peachtree St. N.E., Suite 800  
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Facsimile: (404) 888-6199  
[brad.marsh@swiftcurrie.com](mailto:brad.marsh@swiftcurrie.com)  
[myrece.johnson@swiftcurrie.com](mailto:myrece.johnson@swiftcurrie.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I caused the attached **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(b) (DIVERSITY)** to be filed and served on counsel of record as follows:

Frank A. Ilardi  
Ilardi Law, LLC  
1201 Peachtree Street, NE  
Suite 2000  
Atlanta, Georgia 30361  
[frank@ilawgeorgia.com](mailto:frank@ilawgeorgia.com)

This 14th day of September, 2023.

SWIFT, CURRIE, McGHEE & HIERS, LLP

*/s/ Myrece R. Johnson*

---

C. Bradford Marsh  
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Myrece R. Johnson  
Georgia Bar No. 940301  
*Attorneys for Defendant Harbor Freight Tools  
USA, Inc.*

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[myrece.johnson@swiftcurrie.com](mailto:myrece.johnson@swiftcurrie.com)

## CIVIL COVER SHEET

Exhibit 1

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Gregory Smithey

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Frank Ilardi, Ilardi Law, 1201 Peachtree Street NE, Suite  
2000, Atlanta GA 30361, 470-443-9060

## DEFENDANTS

Harbor Freight Tools USA, Inc.

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

C. Bradford Marsh/Myrece Johnson, Swift Currie, 1420  
Peachtree Street NE, Suite 800, Atlanta, GA 30309

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 625 Drug Related Seizure	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 626 Property 21 USC 881	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 424 Intellectual Property Rights	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input checked="" type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice			<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 550 Securities/Commodities/Exchange
				<input type="checkbox"/> 890 Other Statutory Actions
				<input type="checkbox"/> 891 Agricultural Acts
				<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 896 Arbitration
				<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§ 1332, 1441, and 1446

Brief description of cause:

Premises liability case.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

September 15, 2023

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

Exhibit C

Exhibit 1  
 ID# E15PNTNYM-4Y5  
 EFILED IN OFFICE  
 CLERK OF STATE COURT  
 COBB COUNTY, GEORGIA  
**23-A-3557**

AUG 10, 2023 10:18 AM

*Robin C. Bishop*  
 Robin C. Bishop, Clerk of State Court  
 Cobb County, Georgia

IN THE STATE COURT OF COBB COUNTY  
 STATE OF GEORGIA

GREGORY SMITHEY,

Plaintiff,

v.

HARBOR FREIGHT TOOLS USA, INC.  
 and JOHN DOES 1-5,

Defendants.

\*  
 \*  
 \*  
 \*  
 \*  
 \*  
 \*  
 \*  
 \*

CIVIL ACTION FILE  
 NO. \_\_\_\_\_

JURY TRIAL DEMANDED

---

COMPLAINT

---

Plaintiff brings this lawsuit to recover for injuries he sustained after falling over a hidden hazard in a retail store.

PARTIES, JURISDICTION AND VENUE

1.

Plaintiff Gregory Smithey ("Plaintiff") resides in Georgia. By filing this lawsuit, Plaintiff submits to the jurisdiction of this Court and to venue in Cobb County.

2.

Defendant Harbor Freight Tools USA, Inc. ("Harbor Freight") is a foreign corporation that can be served through its registered agent - Corporate Creations Network Inc. - at 2985 Gordy Parkway, 1<sup>st</sup> Floor, Marietta, Cobb County, Georgia 30006.

3.

Defendants John Does 1-5 are presently unknown persons whose acts or omissions caused or contributed to cause Plaintiff's injuries and damages.

Exhibit C





4.

This Court has personal jurisdiction over Harbor Freight.

5.

This Court has jurisdiction over the subject matter of this case.

6.

Venue is proper in Cobb County.

**FACTS**

7.

Plaintiff reasserts the preceding paragraphs as if fully restated here.

8.

Harbor Freight is the owner and/or occupier of a discount tool store located at 401 South Columbia Avenue in Rincon, Georgia 31326 ("Rincon Harbor Freight").

9.

Plaintiff went to the Rincon Harbor Freight on August 30, 2021 to shop for a generator.

10.

As Plaintiff walked down an aisle in the Rincon Harbor Freight on August 30, 2021, Plaintiff fell and hit his head on the ground.

11.

While Plaintiff was on the ground, he saw a generator – which was obscured from Plaintiff's view while he was walking – that was sticking out from under a display table and into the aisle.

12.

Plaintiff suffered a severe laceration to his head and other injuries as a result of falling over a generator in the Rincon Harbor Freight on August 30, 2021.

**COUNT ONE - NEGLIGENCE**

13.

Plaintiff reasserts the preceding paragraphs as if fully restated here.

14.

Plaintiff was an invitee at the Rincon Harbor Freight on August 30, 2021.

15.

Harbor Freight owed a duty to Plaintiff to exercise ordinary care to keep its premises safe.

16.

Harbor Freight was negligent and failed to exercise ordinary care by not keeping the aisles at the Rincon Harbor Freight free of hazards.

17.

Harbor Freight was negligent and failed to exercise ordinary care by not having reasonable inspection procedures in place to ensure that the aisles at the Rincon Harbor Freight were free of hazards.

18.

Plaintiff suffered injuries and damages that were proximately caused by Harbor Freight's negligent act(s) and omission(s).

### DAMAGES

19.

Plaintiff reasserts the preceding paragraphs as if fully restated here.

20.

The negligent acts and omissions by Harbor Freight proximately caused Plaintiff to incur special damages in the form of past medical bills in amounts that will be developed during discovery and proven at trial.

21.

The negligent acts and omissions by Harbor Freight proximately caused Plaintiff to suffer general damages in the form of pain and suffering, mental anguish, emotional distress, loss of the capacity for the enjoyment of life, diminished capacity to labor, the amounts of which are for the jury to determine.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a) that Summons issue and service be perfected requiring Harbor Freight to appear and answer this Complaint;
- b) that Plaintiff have a trial by a twelve-person jury;
- c) that a judgment be entered in favor of Plaintiff;
- d) that Plaintiff recover past and future special damages, including but not limited to medical bills, in amounts to be proven at trial;
- e) that Plaintiff recover past and future general damages in amounts to be decided at trial by the enlightened conscience of a fair and impartial jury;



- f) that all costs of this action are taxed against Defendant; and
- g) for such further relief as the Court deems fair and appropriate.

Respectfully submitted, this the 10<sup>th</sup> day of August, 2023.

ILARDI LAW, LLC

/s/ Frank A. Ilardi

Frank A. Ilardi

Georgia Bar No. 382028

*Counsel for Plaintiff*

1201 Peachtree Street, NE - Suite 2000

Atlanta, Georgia 30361

Phone / Fax: (470) 443-9060

Email: frank@ilawgeorgia.com

Exhibit 1  
 ID# ETSPTNYM-STM  
 EFILED IN OFFICE  
 CLERK OF STATE COURT  
 COBB COUNTY, GEORGIA  
**23-A-3557**

AUG 10, 2023 10:18 AM

*Robin C. Bishop*  
 Robin C. Bishop, Clerk of State Court  
 Cobb County, Georgia

IN THE STATE COURT OF COBB COUNTY  
 STATE OF GEORGIA

GREGORY SMITHEY,

Plaintiff,

v.

HARBOR FREIGHT TOOLS USA, INC.  
 and JOHN DOES 1-5,

Defendants.

\*  
 \*  
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 \*  
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 \*  
 \*  
 \*  
 \*

CIVIL ACTION FILE  
 NO. \_\_\_\_\_

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PLAINTIFF'S FIRST INTERROGATORIES, REQUEST FOR PRODUCTION  
 OF DOCUMENTS AND REQUEST FOR ADMISSIONS TO DEFENDANT  
 HARBOR FREIGHT TOOLS USA, INC.

---

Plaintiff Gregory Smithey propounds the following Interrogatories, Request for  
 Production of Documents and Request for Admissions to Defendant Harbor Freight  
 Tools USA, Inc. pursuant to O.C.G.A. §§ 9-11-33, 9-11-34 and 9-11-36:

DEFINITIONS

"Plaintiff" refers to Plaintiff Gregory Smithey.

"Harbor Freight" refers to Defendant Harbor Freight Tools USA, Inc.

"You" or "your" refers to Harbor Freight.

"Rincon Harbor Freight" refers to store # 2965 located at 410 South Columbia  
 Avenue in Rincon, Georgia 31326.

Exhibit C



### INTERROGATORIES

Pursuant to O.C.G.A. § 9-11-33(b)(2), an interrogatory may ask a party to state “an opinion or contention that relates to fact or to the application of law to fact....” Please answer the following questions in full and under oath:

1.

What caused Plaintiff to fall at the Rincon Harbor Freight on August 30, 2021?

2.

Please provide the names, addresses, phone numbers, and current employment status for everyone who worked at the Rincon Harbor Freight on August 30, 2021.

3.

Please provide the names, addresses, and telephone numbers for everyone who – to the best of your knowledge, information, or belief – witnessed Plaintiff fall at the Rincon Harbor Freight on August 30, 2021.

4.

Did anyone who worked at or for Harbor Freight talk to Plaintiff after he fell at the Rincon Harbor Freight on August 30, 2021? Please answer “yes” or “no.” If your answer is “yes,” then please provide the name, job title, and current employment status of each such person.

5.

Did anyone who works with or for Harbor Freight prepare an incident report regarding Plaintiff’s fall at the Rincon Harbor Freight on August 30, 2021? Please answer “yes” or “no.” If your answer is “yes,” then please provide the name, job title, and current

employment status of each person who authored or contributed to that report. If your answer is "no," then please explain why not.

6.

How often was the area where Plaintiff fell at the Rincon Harbor Freight on August 30, 2021 supposed to be inspected for potential hazards? Please identify all documents that support your response.

7.

How often was the area where Plaintiff fell at the Rincon Harbor Freight on August 30, 2021 actually inspected for potential hazards that day? Please identify all documents that support your response.

8.

When and by whom was the area where Plaintiff fell at Rincon Harbor Freight on August 30, 2021 last inspected for potential hazards prior to this incident? Please identify all documents that support your response.

9.

Were there security cameras in the area where Plaintiff fell at the Rincon Harbor Freight on August 30, 2021? Please answer "yes" or "no." If your answer is "yes," then please state whether the footage of Plaintiff falling was preserved.

10.

Have you been a plaintiff or a defendant in a lawsuit in Georgia the past 10 years? Please answer "yes" or "no." If your answer is "yes," then please provide a summary of the claims and identify the county where each lawsuit was filed.

11.

Please provide the names and addresses for all insurance companies that may be liable to satisfy part or all of a judgment which may be entered on Plaintiff's claims.

12.

Is there a self-insured retention or deductible on any of the insurance policies that may be liable to satisfy part or all of judgment which may be entered on Plaintiff's claims? Please answer "yes" or "no." If your answer is "yes," then please state the amount of each such self-insured retention or deductible.

13.

Please provide the factual basis for each affirmative defense raised in your Answer.

14.

For each expert who you expect to call at trial, please provide:

- (a) the name, address and occupation of the witness;
- (b) the subject matter on which the expert is expected to testify;
- (c) the substance of the facts and opinions to which the expert is expected to testify; and
- (d) a summary of the grounds for the expert's opinions.

DOCUMENT REQUESTS

Please produce the following materials:

1.

The full and complete insurance policy (not just the declarations page) from all primary or excess carriers that may be liable to satisfy part or all of a judgment which may be entered on Plaintiff's claims. *See* O.C.G.A. § 9-11-26(b)(2) (allowing for "discovery of the existence and contents" of insurance agreements).

2.

Unedited footage from all security / surveillance cameras at the Rincon Harbor Freight on August 30, 2021.

3.

Your incident report documenting when and how Plaintiff fell at the Rincon Harbor Freight on August 30, 2021.

4.

All photographs of Plaintiff that were taken at the Rincon Harbor Freight on August 30, 2021.

5.

All photographs of that were taken of the area where Plaintiff fell at the Rincon Harbor Freight on August 30, 2021.

6.

Your premises inspection procedures for Rincon Harbor Freight that were in effect in August 2021.

7.

The index to all policy and procedure manuals for Rincon Harbor Freight that were in effect in August 2021.

8.

All documents on which you relied for your responses to Plaintiff's First Interrogatories and all documents identified in such responses.

9.

All documents that support any affirmative defense raised in your Answer.

10.

All documents that form the basis for the opinions of each expert witness who you expect to call at trial.

11.

All documents you obtain from Plaintiff's healthcare providers (these can be produced at no cost by email to [frank@ilawgeorgia.com](mailto:frank@ilawgeorgia.com)).

12.

All documents that you intend to introduce into evidence at trial.

13.

Please produce a log identifying any documents you have declined to produce in response to these requests including the nature of the documents, the date of creation of such documents, the basis of any privilege asserted for not producing the documents, and any person(s) in possession of the documents.

REQUEST FOR ADMISSIONS

Pursuant to *G.H. Bass & Co. v. Fulton County Bd. of Tax Assessors*, 268 Ga. 327 (1997), requests for admissions may require the respondent to apply law to facts and then provide opinions or conclusions of law. Please admit or deny the following requests:

1.

You were properly served with a Summons and a copy of the Complaint.

2.

Your name as it appears in the Complaint is correct.

3.

The State Court of Cobb County has subject matter jurisdiction in this case.

4.

The State Court of Cobb County has personal jurisdiction over you in this case.

5.

Venue is proper in Cobb County.

6.

Plaintiff was an invitee of Harbor Freight on August 30, 2021.

7.

Harbor Freight owed a duty to Plaintiff to exercise ordinary care to keep the premises at the Rincon Harbor Freight safe on August 30, 2021.

8.

Harbor Freight owed Plaintiff a duty to inspect the Rincon Harbor Freight for hazardous conditions on August 30, 2021.



9.

Harbor Freight admits liability in this case.

10.

Plaintiff is not at fault for falling at the Rincon Harbor Freight on August 30, 2021.

11.

No person who is not a party to this lawsuit caused Plaintiff to fall at the Rincon Harbor Freight on August 30, 2021.

12.

No person who is not a party to this lawsuit contributed to cause Plaintiff to fall at the Rincon Harbor Freight on August 30, 2021.

13.

No entity that is not a party to this lawsuit caused Plaintiff to fall at the Rincon Harbor Freight on August 30, 2021.

14.

No entity that is not a party to this lawsuit contributed to cause Plaintiff to fall at the Rincon Harbor Freight on August 30, 2021.

15.

You have produced all non-privileged materials in your possession, custody, or control that are responsive to Plaintiff's document requests.

This the 10<sup>th</sup> day of August, 2023.

ILARDI LAW, LLC

/s/ Frank A. Ilardi

Frank A. Ilardi

Georgia Bar No. 382028

*Counsel for Plaintiff*

1201 Peachtree Street, NE - Suite 2000

Atlanta, Georgia 30361

Phone / Fax: (470) 443-9060

E-mail: frank@ilawgeorgia.com

AUG 10, 2023 10:18 AM

*Robin C. Bishop*  
Robin C. Bishop, Clerk of State Court  
Cobb County, Georgia

IN THE STATE AND SUPERIOR COURTS  
STATE OF GEORGIA

NOTICE OF LEAVE OF ABSENCE

To: All Judges, Clerks of Court, and Counsel of Record

From: Frank A. Ilardi

Re: Notice of Leave of Absence

Date: August 10, 2023

Pursuant to Georgia Uniform Court Rule 16, Plaintiff's counsel Frank A. Ilardi respectfully notifies all judges before whom he has cases pending, all affected clerks of court, and all opposing counsel, that he will be on leave as follows:

1. The period of leave during which time Applicant will be away from the practice of law is: October 9, 2023 through and including October 25, 2023. The purpose of the leave is: family trip.

2. All affected judges and opposing counsel shall have ten days from the date of this Notice to object to it. If no objections are filed, the leave shall be granted.

This the 10<sup>th</sup> day of August, 2023.

ILARDI LAW, LLC

/s/ Frank A. Ilardi

Frank A. Ilardi

Georgia Bar No. 382028

Counsel for Plaintiff(s)

1201 Peachtree Street, NE - Suite 2000  
Atlanta, Georgia 30361  
Phone / Fax: 470-443-9060  
Email: frank@ilawgeorgia.com

Exhibit C

CERTIFICATE OF SERVICE

Undersigned counsel certifies that the above **Notice of Leave of Absence** was electronically submitted today through Odyssey eFileGa, which will serve all affected clerks and opposing counsel.

This the 10<sup>th</sup> day of August, 2023

ILARDI LAW, LLC

/s/ Frank A. Ilardi

Frank A. Ilardi

Georgia Bar No. 382028

*Counsel for Plaintiff(s)*

1201 Peachtree Street, NE - Suite 2000  
Atlanta, Georgia 30361  
Phone / Fax: 470-443-9060  
Email: frank@ilawgeorgia.com

Exhibit 1  
ID# ETSPTNYM-EPM  
FILED IN OFFICE  
CLERK OF STATE COURT  
COBB COUNTY, GEORGIA  
**23-A-3557**

AUG 10, 2023 10:18 AM

*Robin C. Bishop*  
Robin C. Bishop, Clerk of State Court  
Cobb County, Georgia

**STATE COURT OF COBB COUNTY  
STATE OF GEORGIA**

CIVIL ACTION NUMBER 23-A-3557

\$198.00 COST PAID

Smithey, Gregory

**PLAINTIFF**

**VS.**

Harbor Freight Tools USA, Inc.  
Does 1-5, John

**DEFENDANTS**

**SUMMONS**

TO: HARBOR FREIGHT TOOLS USA, INC.

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

**FRANK A ILARDI  
ILARDI LAW, LLC  
1201 Peachtree Street, NE  
Suite 2000  
Atlanta, Georgia 30361**

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

**This 14th day of August, 2023.**

Clerk of State Court



*Robin C. Bishop*

Robin C. Bishop, Clerk of State Court  
Cobb County, Georgia

Exhibit 1  
ID# E15PNTNYM-2BN  
FILED IN OFFICE  
CLERK OF STATE COURT  
COBB COUNTY, GEORGIA  
**23-A-3557**

AUG 10, 2023 10:18 AM

*Robin C. Bishop*  
Robin C. Bishop, Clerk of State Court  
Cobb County, Georgia

CIVIL ACTION NUMBER 23-A-3557

\$198.00 COST PAID

Smithey, Gregory

**PLAINTIFF**

**VS.**

Harbor Freight Tools USA, Inc.  
Does 1-5, John

**DEFENDANTS**

**SUMMONS**

TO: DOES 1-5, JOHN

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

**FRANK A ILARDI  
ILARDI LAW, LLC  
1201 Peachtree Street, NE  
Suite 2000  
Atlanta, Georgia 30361**

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

**This 14th day of August, 2023.**

Clerk of State Court



*Robin C. Bishop*

Robin C. Bishop, Clerk of State Court  
Cobb County, Georgia

**General Civil and Domestic Relations Case Filing Information Form**
☐ Superior or ☒ State Court of Cobb County
**For Clerk Use Only**

AUG 10, 2023 10:18 AM

Date Filed 08-10-2023Case Number 23-A-3557

MM-DD-YYYY


Robin C. Bishop, Clerk of State Court  
Cobb County, Georgia**Plaintiff(s)**Smithey, Gregory

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Plaintiff's Attorney ILARDI, FRANK A**Defendant(s)**Harbor Freight Tools USA, Inc.

Last	First	Middle I.	Suffix	Prefix

Does 1-5, John

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Bar Number 382028Self-Represented ☐

Check one case type and, if applicable, one sub-type in one box.

**General Civil Cases**

- ☐ Automobile Tort  
☐ Civil Appeal  
☐ Contract  
☐ Contempt/Modification/Other Post-Judgment  
☐ Garnishment  
☒ General Tort  
☐ Habeas Corpus  
☐ Injunction/Mandamus/Other Writ  
☐ Landlord/Tenant  
☐ Medical Malpractice Tort  
☐ Product Liability Tort  
☐ Real Property  
☐ Restraining Petition  
☐ Other General Civil

**Domestic Relations Cases**

- ☐ Adoption  
☐ Contempt  
☐ Non-payment of child support, medical support, or alimony  
☐ Dissolution/Divorce/Separate Maintenance/Alimony  
☐ Family Violence Petition  
☐ Modification  
☐ Custody/Parenting Time/Visitation  
☐ Paternity/Legitimation  
☐ Support – IV-D  
☐ Support – Private (non-IV-D)  
☐ Other Domestic Relations

- ☐ Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

Case Number

Case Number

- ☒ I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

- ☐ Is a foreign language or sign-language interpreter needed in this case? If so, provide the language(s) required.

Language(s) Required

- ☐ Do you or your client need any disability accommodations? If so, please describe the accommodation request.

Exhibit 1  
ID# E-LKEHSKWJ-XCX  
FILED IN OFFICE  
CLERK OF STATE COURT  
COBB COUNTY, GEORGIA  
**23-A-3557**

AUG 17, 2023 11:14 AM

*Robin C. Bishop*  
Robin C. Bishop, Clerk of State Court  
Cobb County, Georgia

IN THE STATE COURT OF COBB COUNTY  
STATE OF GEORGIA

GREGORY SMITHEY,

*Plaintiff,*

v.

HARBOR FREIGHT TOOLS USA, INC.  
and JOHN DOES 1-5,

*Defendants.*

Civil Action No. 23-A-3557

---

**AFFIDAVIT OF SERVICE UPON HARBOR FREIGHT TOOLS USA, INC.**

---

Personally, appeared before the undersigned officer duly authorized by law to administer oaths, Christian Seklecki, who, after being duly sworn, deposes and states the following:

1.

Affiant states that he is over 18 years of age, a citizen of the United States, and not related to the parties herein. The statements are true and correct and based upon my personal knowledge. I am appointed to serve in the State Court of Cobb County.

2.

On August 16, 2023, at 1:49 p.m., I served HARBOR FREIGHT TOOLS USA, INC. by leaving a copy of a SUMMONS, COMPLAINT, PLAINTIFF'S FIRST INTERROGATORIES, REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST FOR ADMISSIONS TO DEFENDANT HARBOR FREIGHT TOOLS USA, INC. in the above-styled action, with AMMA MOORE, who is expressly authorized to accept service on behalf of CORPORATE



CREATIONS NETWORK, the Registered Agent of HARBOR FREIGHT TOOLS USA, INC, located and served at 2985 Gordy Parkway, First Floor, Marietta, Georgia 30066.

3.

ANNA MOORE is a Caucasian female, approximately 30-years-old, 5'7" and 160 lbs.


4.

I have served Anna Moore multiple times in the past. She accepted service from me as she usually does.



Affiant – Christian Seklecki  
404-771-3204

Sworn to and subscribed to before me  
This 17 day of August 2023

  
Notary Public

## STATE OF GEORGIA

## Secretary of State

Corporations Division

313 West Tower

2 Martin Luther King, Jr. Dr.

Atlanta, Georgia 30334-1530

## Annual Registration

\*Electronically Filed\*

Secretary of State

Filing Date: 02/15/2023 10:33:49

## BUSINESS INFORMATION

**BUSINESS NAME** : HARBOR FREIGHT TOOLS USA, INC.

**CONTROL NUMBER** : 0050361

**BUSINESS TYPE** : Foreign Profit Corporation

**JURISDICTION** : Delaware

**ANNUAL REGISTRATION PERIOD** : 2023

## BUSINESS INFORMATION CURRENTLY ON FILE

**PRINCIPAL OFFICE ADDRESS** : Attn: Legal Compliance, 26541 Agoura Road, Calabasas, CA, 91302-2093, USA

**REGISTERED AGENT NAME** : CORPORATE CREATIONS NETWORK INC.

**REGISTERED OFFICE ADDRESS** : 2985 GORDY PARKWAY, 1ST FLOOR, Marietta, GA, 30006, USA

**REGISTERED OFFICE COUNTY** : Cobb

OFFICER	TITLE	ADDRESS
Eric L Smidt	CEO	26541 Agoura Road, Calabasas, CA, 91302-2093, USA
Tomas Kokko	CFO	26541 Agoura Road, Calabasas, CA, 91302-2093, USA
Marc M Friedman	Secretary	26541 Agoura Road, Calabasas, CA, 91302-2093, USA

## UPDATES TO ABOVE BUSINESS INFORMATION

**PRINCIPAL OFFICE ADDRESS** : 26677 Agoura Rd., Calabasas, CA, 91302-2093, USA

**REGISTERED AGENT NAME** : CORPORATE CREATIONS NETWORK INC.

**REGISTERED OFFICE ADDRESS** : 2985 GORDY PARKWAY, 1ST FLOOR, Marietta, GA, 30006, USA

**REGISTERED OFFICE COUNTY** : Cobb

OFFICER	TITLE	ADDRESS
Eric Smidt	CEO	26677 Agoura Rd., Calabasas, CA, 91302, USA
Jason Kupper	Secretary	26677 Agoura Rd., Calabasas, CA, 91302, USA
Tomas P Kokko	CFO	26677 Agoura Rd., Calabasas, CA, 91302, USA

## AUTHORIZER INFORMATION

**AUTHORIZER SIGNATURE** : John Duemig, Special Secretary

**AUTHORIZER TITLE** : Authorized Person

IN THE STATE COURT OF COBB COUNTY  
STATE OF GEORGIA

GREGORY SMITHEY,	)(	
	)(	
Plaintiff,	)(	
	)(	CIVIL ACTION FILE NO.
v.	)(	23-A-3557
	)(	
HARBOR FREIGHT TOOLS USA, INC.,	)(	
AND JOHN DOES 1-5	)(	
	)(	
Defendants.	)(	

**DEFENDANT HARBOR FREIGHT TOOLS USA, INC. 'S**  
**NOTICE OF FILING NOTICE OF REMOVAL TO FEDERAL COURT**

NOTICE IS HEREBY GIVEN that Defendant Harbor Freight Tools USA, Inc. has on this date removed the above-captioned action the United States District Court for the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. Attached as Exhibit 1 is a true and correct copy of Defendant's Federal Notice of Removal, with exhibits.

This 14th day of September, 2023.

SWIFT, CURRIE, McGHEE & HIERS, LLP

*/s/ Myrece R. Johnson*

\_\_\_\_\_  
C. Bradford Marsh  
Georgia Bar No. 471280  
Myrece R. Johnson  
Georgia Bar No. 940301  
*Attorneys for Defendant Harbor Freight Tools USA, Inc.*

1420 Peachtree St. N.E., Suite 800  
Atlanta, Georgia 30309  
Telephone: (404) 874-8800  
Facsimile: (404) 888-6199  
[brad.marsh@swiftcurrie.com](mailto:brad.marsh@swiftcurrie.com)  
[myrece.johnson@swiftcurrie.com](mailto:myrece.johnson@swiftcurrie.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I caused the attached **DEFENDANT HARBOR FREIGHT TOOLS USA, INC.'S NOTICE OF FILING NOTICE OF REMOVAL TO FEDERAL COURT** to be filed and served on counsel of record as follows:

Frank A. Ilardi  
Ilardi Law, LLC  
1201 Peachtree Street, NE  
Suite 2000  
Atlanta, Georgia 30361  
[frank@ilawgeorgia.com](mailto:frank@ilawgeorgia.com)

This 14th day of September, 2023.

SWIFT, CURRIE, McGHEE & HIERS, LLP

*/s/ Myrece R. Johnson*

---

C. Bradford Marsh  
Georgia Bar No. 471280  
Myrece R. Johnson  
Georgia Bar No. 940301  
*Attorneys for Defendant Harbor Freight Tools USA, Inc.*

1420 Peachtree St. N.E., Suite 800  
Atlanta, Georgia 30309  
Telephone: (404) 874-8800  
Facsimile: (404) 888-6199  
[brad.marsh@swiftcurrie.com](mailto:brad.marsh@swiftcurrie.com)  
[myrece.johnson@swiftcurrie.com](mailto:myrece.johnson@swiftcurrie.com)

4870-7631-9103, v. 1